

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF THE RATES OF KENTUCKY-) CASE NO. 2004-00103
AMERICAN WATER COMPANY)

ORDER

The Attorney General (“AG”) has moved to compel Kentucky-American Water Company (“Kentucky-American”) to respond to certain requests for information. Kentucky-American has responded in opposition to the motion. Finding that the requests may produce relevant information, the Commission grants the motion.

Pursuant to the Commission’s Order of May 28, 2004, the AG on June 10, 2004 served upon Kentucky-American a set of requests for information. Kentucky-American submitted its response to these requests on June 25, 2004. Contending that Kentucky-American’s responses to three of these requests were non-responsive and inadequate, the AG has subsequently moved to compel Kentucky-American to produce the requested information.

In AG Request 1-144, the AG requested that Kentucky-American provide for each of the last five years a list of the companies that have filed a consolidated tax return with Kentucky-American and state the taxable income or tax loss of each company and its status as a regulated utility. Kentucky-American objected to the request on the grounds of relevancy and materiality.

In his motion to compel, the AG argues that the requested information is relevant to determining “whether the filing of the consolidated returns has resulted in any

savings, financial benefit, or detriment to Kentucky-American.” Motion at 2. Kentucky-American argues that the filing of a consolidated tax return provides no direct financial benefit. It asserts that the financial status of its sister companies with whom it files a consolidated tax return has no impact on its rates for water service. While Kentucky-American acknowledges that the use of a consolidated tax return offers the potential benefit of recognizing losses that would otherwise go unrecognized, it states that such benefit accrues only to its corporate parent – Thames Water Aqua US Holdings, Inc. (“TWUS”).

Given that TWUS’s filing of a consolidated tax return may potentially affect Kentucky-American’s revenue requirement, we find that the requested information is relevant and is properly discoverable. We overrule the objection and direct Kentucky-American to produce the requested information.

In AG Request 1-158, the AG requested that Kentucky-American identify all entities that Kentucky-American has given presentations on outsourcing of management or the transfer of control of ownership or management of those entities’ operations and provide a copy of each presentation and any correspondence. Noting the absence of any investments, revenues or expenses related to the acquisition of such entities in its application, Kentucky-American objected on the grounds of relevance and materiality.

In his motion to compel, the AG argues that the requested information is necessary to ensure that ratepayers do not fund Kentucky-American’s business development of non-regulated activities through regulated charges for water service. He asserts that the requested information is relevant to Kentucky-American’s use of its

resources and the reasonableness of its cost allocations to wastewater and non-regulated service activities.

The level of Kentucky-American's business activities and its cost allocations between regulated and non-regulated activities affect Kentucky-American's revenue requirements and thus its rates for service. Kentucky-American proposes a rate adjustment based in part upon projected operations. The requested information concerns potential business operations within Kentucky that may occur during the test period. To the extent that this information may be used to test and examine the underlining assumptions of Kentucky-American's forecasted non-regulated operations and expenses for the test period, it is relevant. Accordingly, the Commission overrules Kentucky-American's objection and orders the production of the requested information.

In AG Request 1-176, the AG sought a copy of Kentucky-American's current strategic business plan. Refusing to provide the information, Kentucky-American stated the "2004 and 2005 information in the Plan has been incorporated into this case and all other information in the Plan is irrelevant, immaterial, and inadmissible in this request for a general increase in rates using a forecasted test year of the 12 months ending November 30, 2005."

In his motion to compel, the AG argues that the Commission has previously used information from Kentucky-American's business plan when reviewing its rate adjustment proposals. He further argues that the information in the period beyond November 2005 "is relevant to test the reasonableness of the Company's positions and proposals." Motion at 5. Kentucky-American in its response notes that all aspects

of the plan that are relevant to this rate proceeding have been provided and that business proposals for later periods have no relevance to the proposed rates.

The Commission disagrees with Kentucky-American's limited view of the business plan's relevance. The portions of the plan that deal with periods beyond the test period are important to testing the credibility and reliability of the company's assumptions and forecasts for test-period operations. Accordingly, the Commission overrules Kentucky-American's objections.

IT IS THEREFORE ORDERED that:

1. The AG's motion to compel is granted.
2. Kentucky-American shall provide the requested information to the AG no later than 7 days from the date of this Order.
3. If the AG wishes to request from Kentucky-American additional information pertaining to Kentucky-American's responses to this Order, he shall make an appropriate motion to the Commission and provide with such motion his requests for information.

Done at Frankfort, Kentucky, this 11th day of August, 2004.

By the Commission

ATTEST:



Executive Director